

REMARKS

Reconsideration of the present application is respectfully requested on the basis of the following particulars.

1. In the Application Papers

It will be noted that the outstanding Office Action does not indicate whether the drawings filed concurrently with the pending application are approved by the Examiner. Pursuant to MPEP § 608.02(e), the Examiner should determine the completeness and consistency of the drawings by indicating whether the drawings are indeed accepted. Acceptance of the drawings is therefore respectfully requested in the next Office communication.

2. Priority Under 35 U.S.C. § 119

It will be pointed out that the outstanding Action does not provide acknowledgment of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). According to the records of the Applicant, the filing receipt of the pending application indicates that the pending application claims priority of Belgian application 2004/0434 filed July 10, 2002. A copy of this priority document was filed with the pending application.

The Examiner is respectfully requested to acknowledge the claim for priority and receipt of the foreign priority document submitted under 35 U.S.C. § 119 with the original application papers. If the document has been lost, a new document will be provided.

3. In the Abstract

The abstract of the disclosure is presently amended to conform to the revised language in the claims. The revisions to the abstract place the abstract more in

conformance with U.S. style. Approval of the amendment to the abstract is respectfully requested in the next Office communication.

4. In the Claims

As presented in the "Amendment of the Claims," claims 1-11 are currently amended. The amendments to the claims have been submitted to improve the clarity of the subject matter for which protection is sought. The amendments were not made to avoid prior art, as it is believed that the original claims are fully patentable over the cited prior art. Rather, in reviewing the claim language it was perceived that some of the language could be improved to more clearly define the inventive subject matter. It is to be noted that the Examiner did not raise any objections with regard to the language of the original claims under 35 U.S.C. § 112 or any other part of the patent laws and regulations.

The amendments to the claims do not narrow the scope of claims 1-11 as originally filed.

Acceptance of the amendment of the claims is respectfully requested in the next Office communication.

5. Rejection of claims 1-11 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,109,954 (Skyba)

Having carefully considered this rejection, it is respectfully submitted that the Skyba reference does not disclose or suggest the scaffold ladder according to claim 1 of the pending application. More specifically, the Skyba reference does not disclose or suggest each and every feature of the scaffold ladder of claim 1, in particular protruding parts or hook elements arranged to cooperate with erected scaffold elements. Thus, claim 1 is patentable.

Claims 2-11, which depend either directly or indirectly from claim 1, are at least patentable based on their dependency from claim 1 and their individually recited features.

Turning to the Skyba reference, the Office Action equates the standoff brackets 48A, 48B, 48C and 48D of the apparatus 10 of Skyba as the protruding parts or hook elements recited in claim 1 of the pending application. This assertion is erroneous and misplaced.

The standoff brackets of the Skyba reference are described as holding the apparatus a fixed distance away from a structure such as a tree (col. 6, lines 8-17). They are not, however, arranged for cooperating with erected scaffold elements. Thus, the Skyba reference fails to teach this important feature according to claim 1 of the pending application.

It is well understood that the dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior art reference's teaching that every claim limitation was described in that single reference. *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 344 F.3d 1186, 1192, 68 USPQ2d 1186, 1190 (Fed. Cir. 2003). Moreover, a prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir.1987). Of course, absence from the reference of any claimed element negates anticipation. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed.Cir.1986).

Thus, when properly interpreted, the disclosure of the Skyba reference requires brackets that space away the apparatus from a structure. The Skyba reference does not discuss or show such protruding parts or hook elements as being arranged to cooperate with erected scaffold elements, but instead describe general purpose spacer elements. Claim 1 of the pending application, however, describes

that the protruding parts or hook elements are arranged to cooperate with erected scaffold elements.

The Skyba reference simply fails to describe the brackets being configured to cooperate with erected scaffold elements. Thus, even an artisan of ordinary skill must guess about how exactly the brackets would substitute for the protruding parts or hook elements of claim 1, and whether the brackets would be capable of being arranged to cooperate with erected scaffold elements. In fact, the Skyba reference makes no suggestion of any kind about the structural suitability of the brackets for cooperating with erected scaffold elements. About the most that can be said for the Skyba reference is that it does not explicitly describe that the brackets cannot be used for erected scaffold elements. However, this negative pregnant is not enough to show anticipation since, as noted above, in order to anticipate a prior art reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.

In view of these remarks, it is readily evident that the Skyba reference does not sufficiently disclose an apparatus, that anticipates the inventive ladder of the pending application.

Concerning claim 2, this claim is patentable over the Skyba reference since the Skyba reference fails to disclose V-shaped brackets upon which rungs span the far ends thereof. In the Action, the rung assembly 20 is equated as the rungs of the pending application. It will be pointed out, however, that the rungs of the Skyba reference are shown in FIGS. 1 and 2 as being joined to the tubular frame 18 and extending substantially parallel to the frame. The rungs are shown as joining at the frame both at a bottom portion and an upper portion. Therefore, rungs of the Skyba reference do not span far ends of the V-shaped brackets and this claim is thus patentable over the teachings of the Skyba reference.

Next, while claim 3 is rejected in the Action, there is no discussion as to how the Skyba reference can be construed to teach the particular embodiment of the hook elements recited in claim 3. It is submitted that the brackets of the Skyba reference are not described as having the structural features of the hook elements of claim 3 such as a downward directed pin arranged to operate with a hole of a flange provided on a vertical scaffold element. Moreover, it is abundantly clear that the Skyba reference does not disclose or suggest that the apparatus is arranged for connection to a scaffold element. Thus, this claim is not anticipated by the Skyba reference.

Claims 4-11 recite different embodiments of the hook shaped elements. These claims further delineate the structural features of the hook elements recited in claim 3, and thus further distance the hook elements of the pending application from the brackets described by the Skyba reference.

Thus in view of these observations, it is respectfully submitted that the Skyba reference does not disclose or suggest the scaffold ladder according to any of claims 1-11 of the pending application. Withdrawal of this rejection is therefore requested.

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Art Unit: 3634

6. Conclusion

In light of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that each and every pending claim in the present application be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicant's Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Justin J. Cassell', written over a horizontal line.

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